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ABSTRACT

This publication contains the proceedings of a Wingspread conference held in Racine, Wisconsin in March 1977, dealing with the topic of criminal sentencing alternatives. The conference grew out of a controversy within the Wisconsin Council on Criminal Justice over "determinant" versus "indeterminant" sentencing. Under a determinant sentencing system, the offender serves a specific legislatively prescribed sentence for a specific crime. Judges have only limited discretion to vary the sentence. The parole board function of evaluating prisoners for release is abolished. With indeterminant sentencing, the system used in Wisconsin and 46 of the 50 states, judges have broad discretionary powers when sentencing. Although many judges do use general, personal guidelines for determining sentences, those guidelines can and do vary widely from judge to judge and from region to region. Under this system, after a person is sentenced, the parole board has wide latitude in determining whether an offender will be released early or made to serve his full sentence. There are five sections to the report. The problems with indeterminant sentencing are discussed in section one. In the second section, an inmate, a legislator, and an attorney talk about their feelings concerning the indeterminant sentencing system. What the determinant sentencing system would do to curb these problems is then examined. Problems with the determinant sentencing system are dealt with in the third section. Other alternatives to the problem are discussed in section four. The final section describes concerns of the discussion groups participating in the conference. (RM)

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CRIMINAL SENTENCING ALTERNATIVES

a report of a

Wingspread Conference

sponsored by

The Wisconsin Council on Criminal Justice

and

Wisconsin Department of Health and Social Services

in cooperation with

The Johnson Foundation

March 21-22, 1977

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Prepared by
Rod French

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PREFACE

I am pleased to introduce the proceedings of the March 21-22, 1977 Wingspread conference on Sentencing Alternatives, which was jointly sponsored by the Wisconsin Council on Criminal Justice and the Wisconsin Department of Health and Social Services, in cooperation with The Johnson Foundation.

Few criminal justice issues have generated as much debate, both nationally and in Wisconsin, as have our sentencing practices. This conference and its participants, which included criminal justice professionals, judges, legislators, attorneys, and interested citizens, have provided a launching point for a serious investigation of this problem in Wisconsin.

As a result, I have appointed a study group to conduct an investigation of our sentencing practices in Wisconsin. This body will assist the Wisconsin Center for Public Policy in collecting and analyzing the necessary data to determine what our sentencing practices are, whether or not there is disparity in our criminal justice system, and whether there is a need to modify our present practices. I recommend this report to all who are concerned with making our criminal justice system effective, efficient, and equitable.

Martin J. Schreiber
Governor
State of Wisconsin

FOREWORD

One of The Johnson Foundation's major program interests is "improving the human environment." The Foundation's efforts towards this goal include convening Wingspread conferences on issues relating to the several aspects of criminal justice. In addition to the conference on Sentencing Alternatives, which is the subject of this report, two other conferences relating to criminal justice were held at Wingspread in 1977 with Johnson Foundation cooperation:

- A state meeting on Juvenile Detention, carried out in cooperation with the Wisconsin Council on Criminal Justice;

- A national conference on Delinquency Prevention, sponsored by the National Association of Counties Research Foundation.

In continuing activity in this area, The Johnson Foundation, in cooperating with a number of highly qualified organizations, has recently convened a Wingspread conference on the Formation of a National Coalition for Jail Reform. We are also exploring conference possibilities on White Collar Crime and Services for Victims of Crime.

In the fall of 1978, we expect to carry out with The Japan Society (New York City), a Wingspread conference which will examine in a comparative way crime in Japan and the United States. This will be an effort to determine whether we can learn from Japanese experience, where the crime rate is considerably lower, how to reduce the rate of crime in the United States.

The conference on Criminal Sentencing Alternatives covered in this Wingspread Report brought together Wisconsin's leading authorities on criminal justice and corrections, legislators, members of the judiciary, state officials, and attorneys. The Wingspread conference was sponsored by the Wisconsin Department of Health and Social Services and the Wisconsin Council on Criminal Justice, in cooperation with The Johnson Foundation.

It has been the good fortune of The Johnson Foundation to receive able assistance from these agencies in the past. Any accomplishments of The Johnson Foundation towards improvement of the human environment has been due in large part to the cooperation of the staffs of agencies such as these.

In the area of criminal justice, The Johnson Foundation has benefited over the years from the experienced counsel of Milton Rector, President of the National Council on Crime and Delinquency. Sister Rosita Uhen, former college President, a full time member of the Johnson Foundation staff for a number of years, and later consultant, has also given loyal service in matters relating to criminal justice.

Consistent with The Johnson Foundation's fundamental belief in the value and potential of the individual's useful place in society, projects relating to criminal justice will continue to be carried out. They will always be examined in the light of assistance to the individual and also obligations to society as a whole, including whether individuals assisted can assume their orderly place within society as citizens who respect the rights of others under law.

Leslie Paffrath
President
The Johnson Foundation

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INTRODUCTION

Diogenes spent a lifetime searching for an honest man. One suspects his search would have been no easier had he sought the answer to the question: what is justice? Can justice possibly be given form and objective standards for evaluation?

In criminal law, this has been an urgent question, most particularly in the area of sentencing.

Is it just for one person to serve one year in prison, while another person serves five years, both for the same offense? Is it just that one person be put on probation because the judge reacts favorably to him as he stands before the bench; while another, for the same crime, goes to jail?

To what extent are convicted criminals at the whim of the sentencing judge? Does the discretionary sentencing power of the judge actually subvert the aim of the criminal justice system: to provide swift and just punishment for criminal acts?

Or, is the discretionary power of the judge and the parole board to distinguish among varying degrees of criminal intent, mitigating circumstances, and the extent to which an offender might change, essential in maintaining fairness within the sentencing system?

And once a person is in prison, to what extent is his future at the mercy or goodwill of the few individuals who make up the parole board?

These were the key questions at a conference on sentencing alternatives held in March, 1977, at Wingspread, the conference center of The Johnson Foundation in Racine, Wisconsin. This Wingspread conference

was sponsored by the Wisconsin Council on Criminal Justice (WCCJ) and the Wisconsin Department of Health and Social Services, in cooperation with The Johnson Foundation.

As one might expect, there were no easy answers.

The conference on sentencing alternatives grew out of a controversy within the WCCJ over "determinant" versus "indeterminant" sentencing.

Under a determinant sentencing system, the offender serves a specific legislatively prescribed sentence for a specific crime. Judges have only limited discretion to vary the sentence. Under the determinant sentencing system, the parole board function of evaluating prisoners for release is abolished.

With indeterminant sentencing, the system used in Wisconsin and 46 of the 50 states, judges have broad discretionary powers when sentencing. Although many judges do use general, personal guidelines for determining sentences, those guidelines can and do vary widely from judge to judge, and from region to region.

And, under this system, after a person is sentenced, the parole board has wide latitude in determining whether an offender will be released early or made to serve his full sentence.

In November of 1976, the Standards and Goals Committee of the WCCJ recommended that Wisconsin shift from an indeterminant to determinant sentencing system. That recommendation was overturned by the WCCJ meeting as a whole in January of 1977. The Council instead gave its support to continuing the present system, with the addition of a sentence review board.

This conflict within the WCCJ over determinant sentencing mirrors a national debate on criminal sentencing alternatives. Seven states

are seriously considering determinant sentencing legislation, according to one conference speaker. The sentencing problem has been called the key issue within the entire criminal justice system.

Few would disagree that there is a problem. But what can be done about it? That, most of all, was the question addressed by conferees at the Wingspread Conference on Sentencing Alternatives.

I. The Problem

Discretion. According to the dictionary, discretion is the "freedom to judge or choose; good judgment; wise caution."

Now contrast that definition with this true story. A judge, who happened to stutter, was about to hand out a sentence in a criminal case. The judge looked at the defendant and spoke, "Sev-v-v-v . . . ten years."

Joseph Calpin, Senior Research Assistant with the Criminal Justice Research Center, Inc., in Albany, New York, summed up a general feeling among conference participants when he said, "I don't think that anyone today would deny that there is disparity in sentencing."

PROBLEMS WITH INDETERMINANT SENTENCING. Judges offered similar insights: "There is almost a complete lack of standards. [The length of sentence] is almost all the judge's reaction to the defendant as he stands there," admitted Wisconsin Supreme Court Chief Justice Bruce Beilfuss.

Specifically, conferees identified the following problem areas under the widely practiced indeterminant sentencing system:

- Disparity of sentences given for similar crimes;
- Disparity within the sentences handed out by the same judge;
- Disparity between rural and urban judges;

- Disparity in the initial decision on whether an offender goes on probation or goes to prison;

- Uncertainty of release from prison under the parole board system;

- Lessened deterrent effect of prison terms because of the uncertainty of how much time will actually be served for a particular crime;

- Difficulty parole boards have in accurately predicting when a person has been "rehabilitated";

- Difficulty in planning for future prison populations because of the uncertainty of prison terms;

- And finally, what inmates perceive as the unfairness and arbitrariness of the sentencing system leading to inmate anger and unrest, disrupting the whole rehabilitative function of prisons.

This harsh assessment of indeterminant sentencing was by no means unanimous. If anything characterized this Wingspread conference it was a lively, and at times almost frenetic, exchange of ideas and opinions.

Michael Kannensohn, staff member for the Council of State Governments, early in the conference presented an overview of what changes have been occurring nationally in sentencing. Mr. Kannensohn referred to a 1975 study he helped produce which looked at different sentencing proposals aimed at narrowing the range of sentence disparity.

Four states -- California, Illinois, Maine and Minnesota -- already have some form of determinant or "flat time" sentencing, he said. Seven other states are seriously considering determinant sentencing legislation.

"The fact that there are four states . . . who took action, or contemplated action on restricting or narrowing sentence discretion, indicates a pretty substantial amount of dissatisfaction with the current state sentencing system," he said. Among many state officials, he added, dissatisfaction is "profound."

SOME DISTINCTIONS. Mr. Kannensohn outlined three general approaches to deal with the problems of indeterminant sentencing.

- The first method, and the most controversial, is determinant sentencing. The *legislature* sets definite prison terms for specific crimes, and the judge has only slight latitude to increase or decrease the statutory sentence. Under this system the parole board is abolished.

- The second approach is the *judicial* method. Maximum sentences are established for each felony class. The Judge has to impose a flat time sentence, but has wide discretion in imposing sentences up to the maximum limit. The prisoner has to serve his full sentence. Again, the parole board is abolished.

- The third approach, called the *administrative* method, narrows the discretionary powers of the

parole board by establishing, in advance, parole release dates based on the offender's conduct and the nature of the crime.

SOME MISCONCEPTIONS. Although determinant sentencing is receiving the most attention and study of any alternative sentencing proposal, there continues to exist a number of misconceptions about what determinant sentencing actually does. To help clarify these misconceptions, Mr. Kannensohn became more specific:

- Judges do not have to sentence a first offender to prison under determinant sentencing. They can still impose non-incarcerative punishment or probation.

- Determinant sentencing does not imply the end of parole services after release from prison.

- Inmates still have the opportunity to reduce their sentence somewhat while in prison under "good time" provisions.

- Prison rehabilitation programs are not reduced because of determinant sentencing.

- Juveniles are not covered by determinant sentencing legislation.

"Close analysis has led me to conclude that determinant sentencing represents a relatively modest, non-revoluntionary shift in the primary purpose of the criminal law and corrections; from a sentencing release

practice based on the offender's presumed rehabilitation to a different mode . . . providing appropriate punishment," Mr. Kannensohn said.

However, he warned that no sentencing system would be a quick panacea for reducing crime or prison problems. "The problem of crime [is] complex and sentencing is just one small aspect of the whole situation," he said.

What does determinant sentencing have to offer the present, troubled system? Several speakers spoke directly to that question.

II. One Solution

Uncertainty. Frustration. Anger. Those words cropped up often as Dianne Frostman talked about the feelings of prisoners under Wisconsin's indeterminant sentencing system.

Ms. Frostman is an inmate at the Taycheedah Correctional Institution near Fond du Lac, Wisconsin. She is also a member of the Offender Participation Advisory Committee at Taycheedah.

AN INMATE'S VIEW. Ms. Frostman maintains that judges often hand out stiff sentences in criminal cases to appease public opinion, knowing that the parole board will at some time in the future reduce the sentence. But this judicial practice leaves the inmate with only a vague idea of when he will get out of prison.

"It is a horrible feeling of entrapment not knowing when a group of people called the parole board will decide that you are rehabilitated," she said. "Among inmates this . . . is called life on the installment plan." Determinant sentencing removes this aura of uncertainty from the sentencing system, she said. "And, by giving [the inmate] a specific release date, frustration about the unknown is removed, not only from him, but from everyone else as well. [The inmate] is on his own now, can deal with the sentence and can make realistic plans for release," she said.

Ms. Frostman took her argument further.

"In general," she said, "prisons do not prepare inmates for a return to society. While in prison, inmates have little hand in planning for their future, in developing individual initiative or responsibility.

Instead, they are directed to do what they are told and to wait out their sentence, whatever it might be."

She urged that prisons begin to make contracts with inmates, setting specific goals for the inmates to achieve, and offering rewards in terms of added privileges and status for reaching the goals.

"By making contracts for levels, status, and privileges, the opportunity for a decision on *how* to do time for the crime is left up to the inmate. Just as in the real world, self-discipline has to be used, or the inmate gains nothing. The prison system should be no different from society," Ms. Frostman said.

A LEGISLATOR'S VIEW. Another strong attack on indeterminant sentencing came from Wisconsin State Representative Michael Elconin, Chairman of the Legislative Committee on Criminal Justice and Public Safety. Mr. Elconin said he was preparing a determinant sentencing bill to introduce in the State Legislature.

The parole process received strong criticism from Mr. Elconin.

The assumption underlying parole is the belief that it is possible for the parole board to determine when an offender has been rehabilitated, Mr. Elconin said.

"It seems to me that the indeterminant system, and the parole system, are both based on [this] assumption that we can make predictions about future human behavior. . . . I think that assumes we know much more about the human mind than we actually do," he said.

In addition, Mr. Elconin pointed out, once a person is released from prison on parole, he becomes in effect a second class citizen. If accused of committing a crime, the parolee can be sent back to

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PARTICIPANTS AT

Bruce Beilfuss,
(upper left p
Sarah C. Ettenhe
(center left)
Joseph Calpin, H
(lower left)

Severa Austin, J
(right)
Allyn R. Sielaff
Dianne Frostman,
Charles M. Hill,
(below)

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E WINGSPREAD CONFERENCE

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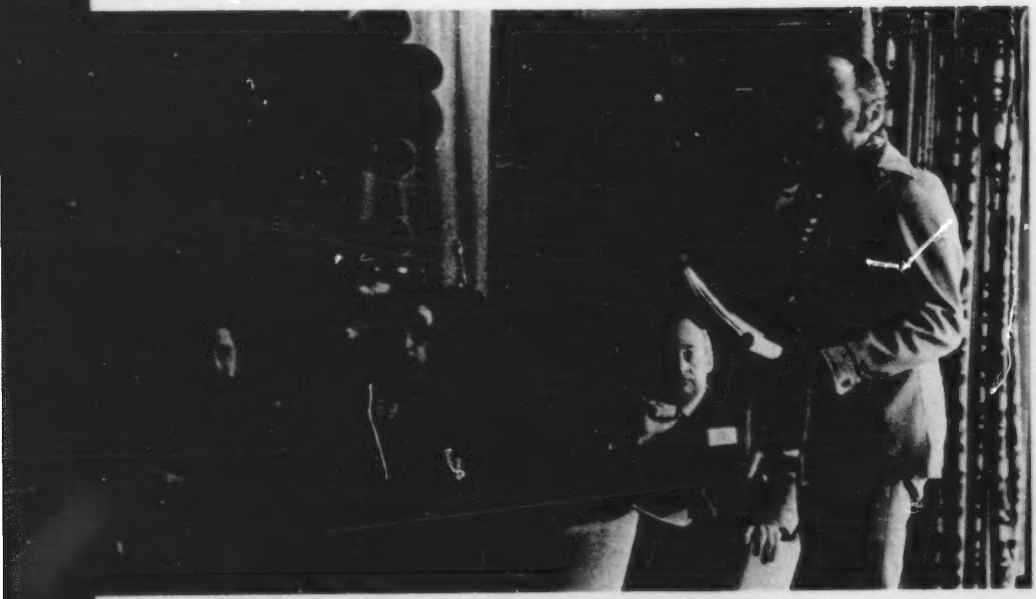

prison without the due process rights given to other citizens, simply by having his parole revoked.

Determinant sentencing, on the other hand, threatens the potential criminal with a definite prison term if convicted, Mr. Elconin said. There is no uncertainty; no hope of getting a lenient judge; no possibility of conning a parole board into granting an early release (a possibility raised earlier by Mr. Kannensohn). Determinant sentencing increases the potential cost of criminal action and "if we increase that cost sufficiently we can begin to drive them out of business," he said.

Underlying all the discussion about the problems of indeterminant sentencing was the issue of disparity. There was general agreement that there is a lack of uniform sentencing for similar crimes and a lack of checks and balances on the sentencing discretion of judges.

A JUDGE'S VIEW. "We do need to narrow judicial discretion. It is too broad," agreed Eau Claire County Circuit Judge Thomas Barland. "The line . . . can be pretty thin and judges can differ over [sentences] in the very same situation."

Most conferees seemed to agree with Judge Barland. In the absence of sentencing standards, judges must use their discretion. The results of that discretion, some argued, are many times unfortunate.

ATTORNEYS' VIEWS. Milwaukee attorney James Shellow said he believed that judges punish some defendants with stiffer sentences for bringing their cases to trial. "'My calendar is filled for five months and you take my time.' [Judges] don't say it but they think it," Mr. Shellow

said. "What we have to deal with . . . is the use of sentence disparity . . . as a coercive technique by trial judges."

Milwaukee County District Attorney E. Michael McCann suggested that sentencing practices tend to reflect community standards - which is one reason for the variance of sentences between rural and urban areas. "The fact is some communities are far more offended by some crimes and other communities are more tolerant," Mr. McCann said.

BENEFITS. What would determinant sentencing do to curb these problems?

- Sentence disparity: Judges would simply apply a limited or predetermined statutory penalty for a given crime. Limited discretion could be used to vary the sentence if there were mitigating or aggravating circumstances.

- Parole: Because there would be no parole, inmates would know how much time they would serve when convicted.

- Fairness: Offenders would not be at the whim of their sentencing judges. There would be no indirect penalty for taking a case to trial; the personalities of different judges would no longer have a major bearing on the quality of justice an offender received.

But would determinant sentencing in fact make the sentencing system more fair and just? A number of conferees thought it would not. They argued that determinant sentencing would raise as many new problems as the system it was replacing.

III. Problems With The Solution

"There are two kinds of injustice: treating equals unequally and treating unequals equally."

Northeastern University criminal justice professor Edith Flynn used that quotation from Plato to sound a warning against determinant sentencing.

A CRIMINAL JUSTICE PROFESSOR'S VIEW. Dr. Flynn called determinant sentencing proposals a "backsliding" and "hardline" reaction to spiraling crime rates. Her argument, in short, was that indeterminant sentencing is attacked because it has "failed" to keep crime down. The appeal of determinant sentencing is the stricter, mandatory sentences.

Dr. Flynn suggested that the failure of the criminal justice system to control crime was not the fault of the sentencing system. "Crime pays because too many people are getting away with it," she said. "What we need, obviously, is to concentrate on the certainty of apprehension at least as much as on the certainty of doing a minimum number of years."

Moreover, she contended that determinant sentencing was "unlikely to provide a much needed solution to the sentencing dilemma" and would "intrinsically produce injustice."

How? It would change the emphasis of the entire criminal justice system from seeking workable alternatives to incarceration to incarceration itself; and this at a time when prisons are already overcrowded, prison staffs overtaxed, and the conditions at many institutions deteriorating.

Second, Dr. Flynn questioned how effective determinant sentencing would be when courts are already overcrowded and 90% of all criminal cases go to some form of plea bargaining.

Third, determinant sentencing would only curb disparity at the minimum end of the scale, Dr. Flynn said. Everyone who is apprehended and convicted would go to jail. A hardened criminal and a person who committed a crime out of need or desperation would serve similar terms.

Fourth, determinate sentencing would increase discretion in the least controlled parts of the criminal justice system: the prosecutors and the police.

Finally, according to Dr. Flynn, at a time when the cost of constructing a maximum security prison cell is $60,000 to $80,000, determinant sentencing would increase prison populations.

The failure of the criminal justice system is not within the sentencing system, but in the lack of manpower and money necessary to make the system work, Dr. Flynn argued. State legislators and public opinion have denied the necessary resources for developing and maintaining an equitable, just, and swift system.

Amid reports of increasing crime, Dr. Flynn continued, the "search" is on for yet another quick solution. Determinant sentencing offers one answer: the impersonal and mechanical sentencing of convicted offenders.

But at what cost?

> Many court systems in the United States have assumed a much more standardized -- punitive -- function. Judicial discretion has frequently been subjected to restraint and the widespread use of alternatives to incarceration over the past has been supplanted by extended jail terms.
>
> Even a cursory examination of public attitudes and the political climate throughout the U.S.

concerning crime control reveals that individual liberty is in distinct danger.

> Whenever the rights of society are deemed more important than the rights of the individual, and whenever there are some who are ready to sacrifice those rights in the name of law and order or safety on the streets, the very fabric of our society is threatened.

More specific and personal objections to determinant sentencing were voiced by Judge Barland.

DISPARITY IN SENTENCES. While agreeing that sentence disparity needs to be reduced, Judge Barland argued that there is a big difference between adopting some form of sentencing guidelines and a rigid legislative sentencing system that removes judicial discretion.

> No person can foresee some of the bizarre factors and examples that come before a court. It is impossible to adequately categorize from the legislative standpoint and fix sentences all the way up and down the line. We need discretion to handle those unforeseeable circumstances. . . . I think that is the whole function of judges, to carry out the exercise of discretion.
>
> That is why, in my judgment, the worst thing we can do under any form of sentencing, determinant or indeterminant, is to have mandatory sentencing by a rigid legislative structure.

Judge Barland suggested other methods of reducing sentence disparity:

- A commission to formulate more precise sentencing standards for judges;
- A pre-sentence investigation in every felony case;

- A more effective and accurate pre-sentencing reporting system;

- An automatic sentencing review system, where the reviewing body cuts off the peak of disparity, while realizing that they can never and should never eliminate disparity entirely because of the need to recognize the differences between individuals, not only in their need, but in what they did, and why they did it;

- An increase in the certainty of the release date from prison;

- A shift in the primary function of the parole board to services and supervision of offenders after release from prison;

- An increase in the exchange of ideas between prison officials and inmates.

Most importantly, it would be a mistake to junk the entire indeterminant sentencing system just because there are problems with it, Judge Barland said.

"I think the subjects we have been talking about here are so profound and complex that this state should be careful not to rush into any one particular system," he urged.

IN DEFENSE OF PAROLE. On a different tack, Allyn Sielaff, Administrator of the Wisconsin Division of Corrections, played devil's advocate

to a number of the conference participants.

His message was succinct.

"Parole does indeed work," he stated. Referring to the strong criticism leveled at the parole system throughout the conference, Mr. Sielaff conceded, "In all sentencing discussions the parole board seems to be the most vulnerable target."

Critics of parole, however, overlook several important factors, he argued. First, parole boards do tend to even out the peaks in sentence disparity. Most offenders do not return to prison -- an argument against those who felt dangerous criminals might "con" parole boards into granting early release. "[Parole Boards] have acquired experience to know when a person is conning them," Mr. Sielaff said.

But more significantly, the concept of parole recognizes that individuals do change, that there can be rehabilitation. While a judge knows the offender only at the time of sentencing, "a parole board can make an up-to-date judgment of how a person may have changed over time," Mr. Sielaff said. "It seems to me to be far more desirable to continue to respect individual differences than to stamp everyone with equal time for equal crime."

Mr. Sielaff also voiced concern that in determinant sentencing, the aftercare services of the parole system would be minimized. Determinant sentencing might foster a "we are through with them" attitude towards prisoners upon release that does not exist in the indeterminant sentencing system. Mr. Sielaff said that aftercare services are essential to the offender's cooptation back into society. It would, however, be unrealistic to expect inmates to voluntarily seek such services if they are not required to do so.

Finally, Mr. Sielaff pointed out that "the selection of the initial charges in [plea] bargaining would in effect cause the prosecutor to determine the sentence" under determinant sentencing, a point raised earlier by Dr. Flynn.

ROLE OF THE PROSECUTOR. The prosecutor's role was elaborated on by Sheboygan County District Attorney Lance Jones. He noted that district attorneys were elected officials, and that the office was often a political stepping stone for individuals who had no intention of staying in the position for very long.

> The role is extremely powerful, very powerful. To a tremendous extent he can control and guide and dictate the quality of law enforcement that is generated in his county.
>
> You've got people moving through the D.A.'s ranks who may stay there one term, maybe two terms. . . . To the extent that [the] discretion starts to shift to them, and because of lack of competence, lack of expertise, . . . you're going to find that whatever you hoped was going to be accomplished by a determinant sentencing situation is going to be lost. That worries me.

IV. Other Alternatives

"I really think we should have entitled this conference something like sentencing options or sentencing choices, because we are walking straight into the trap of debating determinant versus indeterminant sentencing."

Judge Barland voiced that concern midway through the conference. But by the end of the last session, it was clear the lines had not been drawn so sharply as he feared.

Several speakers, and a number of conferees in discussion groups, suggested other remedies for the ills of the sentencing system.

SENTENCING GUIDELINES. Joseph Calpin outlined a project funded by the Criminal Justice Research Center to develop sentencing guidelines for judges. "We feel judges should maintain their sentencing discretion as long as it is structured to achieve some sort of equity," Mr. Calpin said.

Recommended sentence ranges were established in the Criminal Justice Research Center project for various categories of offenses. Judges were asked to follow the guidelines unless they felt a particular case warranted a different sentence. In such cases the judge would state his reasons for imposing a different sentence. Using the sentencing guidelines, prosecutors, attorneys, and defendants would know what kind of sentence to expect if convicted; or if the sentence differed, they would know the reason why.

In Denver, Colorado, where judges are using the sentencing guidelines, 65% to 75% of the decisions are falling within the guidelines, Mr. Caplin said.

He stressed the fact that the guidelines are not mandatory but are only used as a decision making tool. One advantage of the guidelines is that they can be incorporated into a variety of state sentencing structures, he added.

Mr. Calpin said that some states with determinant sentencing legislation pending are also looking at using sentencing guidelines to reduce disparity.

MUTUAL AGREEMENT PROGRAM. Allyn Sielaff described a program used in Wisconsin to reduce the uncertainty of the parole system. Under the Mutual Agreement Program (MAP) inmates negotiate with the parole board for a specific release date which is guaranteed once the inmate has completed the goals of his contract.

More than 200 offenders have been released under the MAP program, Mr. Sielaff said. Another 700 inmates are presently involved in the program and 50% of all inmates released from Wisconsin institutions are released under MAP.

Chief Justice Beilfuss noted that the Wisconsin Supreme Court recently began requiring judges to attend a sentencing seminar as one method of reducing disparity. Justice Beilfuss raised again the possibility of some type of sentencing review board as a check against widely differing sentencing.

However, he cautioned, there might also be problems with such a review board. To be truly effective, the board should have the power to increase as well as decrease sentences. That would raise serious constitutional questions about violations of due process rights and double jeopardy, Justice Beilfus said.

V. Discussion Groups

Despite the brevity of this conference, there was no shortage of recommendations. Conferees were divided into three discussion groups, reporting back at the final session. An hour was not much time to review a subject as complex as the sentencing issue, but there were a surprising number of concrete recommendations, questions for more information, and suggestions for further study.

VARIOUS CONCERNS. One theme was repeated again and again: The problem needs more study. For example, where does disparity exist in the criminal justice system generally; is there disparity among individuals charged; is there disparity in who is arrested and for what offenses?

There was general agreement on the need for aftercare services for released inmates, even if a determinant sentencing system was adopted. It was also suggested that the parole system move more towards helping inmates fit back into society, and away from its primary supervisory role.

It was suggested that standards be set for the parole board to use as criteria for releasing inmates. Wisconsin's MAP program was cited as a positive step in that direction.

It was urged that an extensive study be made to determine what effect a determinant sentencing system would have on the prison population. A separate but related suggestion was that any new correctional institutions be located near population centers, where there would be the opportunity to establish effective work release programs.

Other concerns voiced were:

- That determinant sentencing not shift more power and discretion to district attorneys;

- That the present lottery system, where the judge a defendant faces is determined, leaves too much to chance. The differences between judges is a major factor in the kind and length of sentence a defendant is likely to receive;

- That the average time now served for crimes other than homicide -- 22 months -- is too severe. Under a determinant sentencing system the legislature would fix the sentence terms, and might actually set up a more severe system, one that would increase the average time served;

- That disparity in sentences would become a source of inmate discipline problems;

- That the parole period should be shortened to perhaps a maximum of one year; and that parole be geared to assistance, not supervision;

- That there be a review of the statutory penalties -- over and above any change in the sentencing system -- to remove some of the conflicting and vague statutes.

Support was given from several quarters for some type of sentence review board or commission. Questions raised in relation to such a board included: Would the board consist of judges only, or include civilians? Would it have the power to increase as well as decrease sentences? Would sentence review be mandatory for all cases, just certain felonies, or only upon request?

It was generally agreed that whatever changes are made in the sentencing system, they will probably not have any effect on crime rates. Changing the sentencing system, it was said, would not greatly increase the deterrent factor.

LEGISLATIVE RELATIONS. Wisconsin State Senator Carl Thompson urged that efforts be made to tell legislators what is going on within the criminal justice system. He said lawmakers seldom have firsthand feedback, yet they can, with a "slash of their pen," make drastic cutbacks in appropriations for corrections.

"We don't know about things as they are. The people who are the decision makers as far as the legislature is concerned do not know what is going on in corrections, or on the parole board, or by parole officers," Senator Thompson said.

Another conference participant addressed the question of public opinion.

PUBLIC OPINION. "Sometimes we underestimate our population, the sophisication of our population," he said. The speaker cited a *Princeton Journal Review* survey that indicated most people favor both humane and decent prison conditions, and relatively short prison terms.

> Many times, when we hear the rhetoric of the masses . . . [it] gets oversold as "this is what the population wants." I think the population does want some tough action on crime, but once someone is apprehended and convicted, I would suspect the [public] is probably not that unsympathetic to: one, a fairly short prison term; two, a strong belief in decent conditions; and three, a willingness to invest in rehabilitation.

Other speakers continued this line of discussion. It was pointed out that most people have no idea how the corrections system works. They believe that once a person is convicted he is almost immediately eligible for parole. Many people are not aware of the alternatives to prison that are available, or the various educational and work release programs that prisons offer.

Severa Austin, Chief of Adult Services for the Wisconsin Council on Criminal Justice, told the conference that those within the criminal justice system must shoulder some of the responsibility for public misunderstanding about the justice system.

> We tell people the system will or will not do certain things, and they expect certain things, and their expectations are not met.
>
> My concern with the sentencing issue is that we will take it so seriously that we again begin to say to the public whatever change we will make is going to do something to the crime problem. I'm not sure at all that that is true. I don't think it is.
>
> I think we have a responsibility to tell the truth, even though that is difficult, and to say "we don't know what this is going to do. It is probably not going to solve the crime problem. It may make it a little better."

SUMMATION. Charles Hill, Sr., Executive Director of the WCCJ, summed up the purpose and spirit of the conference. In a show of hands, he asked how many conferees had come to Wingspread favoring indeterminant

sentencing. How many came favoring determinant sentencing? After the hands were put down, Mr. Hill paused a moment. "How many of you came here with what you might call an open mind?" Amid somewhat rueful laughter Mr. Hill asked how many people felt their positions on the issue had been altered by the conference. A number of hands went up.

> The test of a conference is that it has gotten people to think, or rethink, their ideas. We're not here expecting to walk out with a hard and fast solution, but rather to collectively share our wisdom. . . . These [answers] will not come in nice neat packages. [But] if we can begin to monitor what is going on, to help initiate things, and to be willing to keep an open mind, then I have a feeling that this conference will be worthwhile.

CRIMINAL SENTENCING ALTERNATIVES

Wingspread Conference - March 1977

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